

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich
New York Orange County Rome San Diego Silicon Valley Washington, D.C.

Christine M. Gill
Attorney at Law
cgill@mwe.com
202.756.8283

November 23, 2005

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Filing; Continental Airlines Request for Declaratory Ruling (ET Docket No. 05-247)

Dear Ms. Dortch:

Massport submits this *ex parte* filing to correct the numerous misstatements in the recent T-Mobile *ex parte* filing with the Office of Engineering and Technology in the above-referenced matter. It is no surprise that T-Mobile is intensely interested in the Continental case. T-Mobile obviously sees that a ruling in favor of Continental will allow it to force property owners such as Massport to allow carriers to put transmitting antennas on tenants' premises in order to serve the general public.

Why does T-Mobile see this as a great opportunity? Because the case that Continental has presented to the FCC seeks to apply OTARD to a situation where the tenant is installing an antenna *primarily* to serve members of the public who are *not* tenants and who could not assert any OTARD rights themselves. Continental has presented the FCC with a fig leaf to use in this case by saying that its executives sometimes use their club lounge at Logan and have occasion to use Wi-Fi service while they are on the premises. Continental presents this incidental use by a few employees as a basis to justify its primary purpose: using the antenna to serve non-tenants, namely the traveling public that use its club lounge. Should the FCC take the step in this case of finding that the OTARD rules now cover transmitting antennas where service is being provided primarily to non-tenants, the door would be open for T-Mobile to ask other tenants to allow it to site antennas in their club lounges under the pretext that some employees might use the service. This would give T-Mobile the ability to force landlords to allow siting of its antennas by obliterating the qualifying factor under the OTARD rules that the customer be placing the antenna in the leased space *for its own use*.

Further, T-Mobile continues to perpetuate the myth that the Massport central Wi-Fi antenna system is a “monopoly” and that it denies access to carriers such as T-Mobile who want to reach their customers at Logan. This is blatantly untrue and T-Mobile’s continued repetition of this statement does not make it any less so. As T-Mobile well knows, it would be free to serve its customers over the central Wi-Fi antenna system at Logan if it chose to enter into a roaming agreement at Logan, as other WISPs have. However, it is clearly not T-Mobile’s objective to have to compete with others in a free and fair manner. T-Mobile’s prime customer, as stated to the airport industry, is the business traveler. So it seeks to establish its own monopoly and is attempting to be able to carve out exclusive areas in the airport *where no other wireless carrier but T-Mobile can reach that particular customer*.

T-Mobile and Massport have different conceptions of fair and open competition. Under T-Mobile’s approach, it would enter into exclusive service arrangements with particular airlines thereby capturing all of the business of the travelers who use the club lounges at various airports. Under Massport’s central antenna approach, passengers in the airport or in the club lounges have multiple choices for wireless Internet access. They can use the Internet service provider of their choice if they have already existing arrangements (through Boingo, i-Pass or one of their other partner ISPs), they can purchase a day pass through AWG, or they can reach T-Mobile (if T-Mobile were willing to sign a roaming agreement with AWG). Accordingly, the central Wi-Fi antenna system in no way would preclude T-Mobile or any other provider from reaching its customer base. What T-Mobile is really seeking, however, is to have the ability to *restrict* passengers in the club lounges from using anyone but T-Mobile. This is an anathema to the Commission’s competition policies. T-Mobile’s characterization of Massport as “monopolistic” is absurd given that they are trying to corner the market on certain airline passengers under the guise of the OTARD rules.

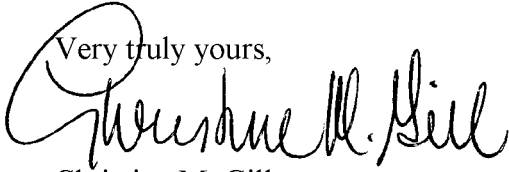
T-Mobile also continues to make statements that are in direct conflict with the record in this proceeding. For example, T-Mobile claims that public safety use of a central antenna is unsupported and that no public safety entities have supported Massport, even though the record clearly demonstrates that Massport has received support from TSA and the Massachusetts State Police unit assigned to Logan Airport. Further, statements like “Massport has frozen advancement at Logan” and “Logan is a competition-free zone” may be great sloganeering but merit little attention by the Commission in a careful analysis of the rights and legal obligations involved in the Massport-Continental dispute.

In contrast to the record, T-Mobile also mistakenly states that the central Wi-Fi antenna lacks the security features of T-Mobile’s service and that the cost of the central Wi-Fi antenna system exceeds the cost of the Continental service. T-Mobile’s overheated rhetoric sheds little light on the issues involved in this case. It is a thinly disguised attempt to use the FCC to override Massport’s reasonable and rational exercise of its management responsibilities to run Logan Airport. Allowing Massport to restrict the use of Continental’s antenna will not stop advanced technology in its tracks nor chill the deployment of advanced wireless technologies. Such claims are grossly exaggerated and should be viewed as such. The Massport central Wi-Fi antenna

Ms. Marlene H. Dortch
November 23, 2005
Page 3

system is an open network model, giving broad access to service providers like T-Mobile who wish to reach their customers. The Commission should not allow this case to be turned into a mandatory access vehicle for carriers such as T-Mobile.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christine M. Gill". The signature is fluid and cursive, with a large initial "C" and "G".

Christine M. Gill

cc: Bruce Franca
Julius Knapp
Lauren Van Wazer
Bruce Romano
Alan Scrimie
Gary Thayer
Geraldine Matise
Priya Shrinivasan